



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

■  
Docket No. 6599-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 27 March 2024. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 21 July 1980. Between

5 April 1983 and 21 September 1983, you received three instances of non-judicial punishment (NJP) for failure to go to your appointed place of duty, absence from your appointed place of duty, and ten specifications of failure to go at the time prescribed to your appointed place of duty. On 17 October 1983, you were issued an administrative remarks (Page 11) counseling formally counseling you concerning deficiencies in your poor military performance and conduct. The Page 11 expressly advised you that any further deficiencies in your performance or conduct may result in disciplinary action and in processing for administrative discharge. On 14 November 1983, you were evaluated and diagnosed with life circumstance problem and marital problems, "not attributable to a mental disorder." You were offered counseling, considered to be responsible for your behavior, and returned to full duty status.

On 18 January 1984, you were convicted by a special court-martial (SPCM) of unauthorized absence (UA), six specifications of failure to go at the time prescribed to your appointed place of duty, failure to obey a lawful command from a commissioned officer, failure to obey a lawful order from a superior noncommissioned officer on two occasions, disrespectful in language towards a noncommissioned officer, resisting lawful apprehension, and an additional charge of eleven specifications of failure to go at the time prescribed to your appointed place of duty. As punishment, you were sentenced to confinement at hard labor, reduction in rank to E-1, and a Bad Conduct Discharge (BCD).

Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to minor disciplinary infractions. You elected your right to consult with military counsel and, after consulting with military counsel, you waived your procedural right to present your case to an administrative discharge board.

On 16 March 1984, the convening authority approved only so much of the sentence that provided for confinement at hard labor and reduction to the pay grade of E-1.

The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps by reason of misconduct due to minor disciplinary infractions. On 6 April 1984, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that: (1) you were young and having marital issues during your period of service in ■■■■■ (2) you were "in a bad way mentally" with the stress of being in reconnaissance and not knowing what was wrong with you at the time and understanding now that you had PTSD, (3) you feel that your mental health issues went undiagnosed and should have been dealt with in a better way than just discharging you and leaving you to deal with the turmoil and problems on your own, (4) you feel as though you were abandoned after devoting so much of your time in the Marines, and (5) you are unable to utilize the Department of Veterans Affairs (VA) to help you with your issues pertaining to your mental and physical condition due

to your discharge character of service. For purposes of clemency and equity consideration, the Board considered the supporting documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 8 February 2024. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. There is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your UA, multiple periods of failure to go to your appointed place of duty, absence from your appointed place of duty, failure to obey a lawful command, failure to obey a lawful order, disrespect, and resisting lawful apprehension, not only showed a pattern of misconduct but were sufficiently serious to negatively affect the good order and discipline of your unit. Further, the Board also noted that your command chose not to approve the punitive discharge awarded at your SPCM. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of approving the BCD; thereby sparing you the stigma of a punitive discharge. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

4/10/2024

